

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTHONY F. DURAN,

Applicant,

v.

CV 10-0884 MCA/WPL

JAMES JANECKA,

Respondent.

ORDER GRANTING MOTION FOR EXTENSION

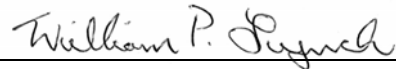
On April 19, 2011, Anthony Duran filed a motion requesting a thirty day extension to file the supplemental briefing that I ordered.¹ (Doc. 17.) As a basis for his motion, Duran states that he works during the law library's hours of operation and that it is difficult to access the law library outside of those times. (*Id.* at 1.) He further states that he has attempted, thus far without success, to obtain legal advice. (*Id.* at 1, 3-6.)

I find that Duran has stated good cause for an extension, and I grant a thirty day extension for the parties to file supplemental briefing on the issue of exhaustion. As I wrote in my previous order (Doc. 16), the briefing may address whether the claims are exhausted and whether an exception to exhaustion applies. In addition, I would like the parties to address which course of action should be taken regarding this mixed habeas petition. The available courses include the following: (1) find that an exception to exhaustion applies and consider the application in full; (2) allow the applicant an opportunity to delete the unexhausted claims without prejudice and proceed

¹ I appreciate that Duran included with his motion the page that I noted was missing from the exhibits attached to his habeas corpus application.

with the exhausted claims; (3) dismiss the application without prejudice to allow the applicant to exhaust the unexhausted claims; or (4) stay consideration of the entire application while the applicant exhausts state remedies. *See* 28 U.S.C. § 2254(b)(1)(B); *Rhines v. Weber*, 544 U.S. 269, 274-78 (2005).

IT IS THEREFORE ORDERED that the deadlines for the submission of supplemental briefing are extended by thirty days. Duran's brief is due no later than **May 27, 2011**, the Respondent's response is due no later than **June 13, 2011**, and Duran's reply is due no later than **June 30, 2011**.

A handwritten signature in cursive script, reading "William P. Lynch", is positioned above a horizontal line.

William P. Lynch
United States Magistrate Judge

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any *pro se* party as they are shown on the Court's docket.